

## REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks. Claims 5, 6, 8-16, 31, 33 and 34 are pending in the application, with claims 5, 6, 8, 13, 31, 33 and 34 being in independent format.

### **Claim Rejections under 35 USC §101 and §112, first paragraph**

The pending claims stand rejected under 35 USC §101 as lacking either a specific and substantial, asserted utility or a well established utility. Specifically, the Examiner asserts that there is no evidence to indicate that the polypeptide sequences of SEQ ID NO: 2346 and 2347, which are encoded by the polynucleotide sequence of SEQ ID NO: 2076, are transcription factors. The pending claims also stand rejected under 35 USC 112, first paragraph, as lacking enablement. Specifically, the Examiner asserts that “since the claimed invention is not supported by either a specific and substantial, asserted utility or a well established utility for the reasons set forth above, one skill in the art clearly would not know how to use the claimed invention”. These rejections are respectfully traversed.

It is clearly stated in the specification at page 35, line 30-page 36, line 9, that the isolated cDNA sequences disclosed in the specification, including that of SEQ ID NO: 2076, were identified as encoding transcription factors, based on similarity to known sequences from other plant species. Table 1 of the specification (page 13, line 8 - page 15) clearly states that SEQ ID NO: 2076 has demonstrated similarity to known Myb transcription factors. The Myb family of transcription factors is discussed in the specification at page 5, lines 3-25. The specification thus clearly provides a utility for the cDNA sequence of SEQ ID NO: 2076 - namely that of encoding a transcription factor. The fact that SEQ ID NO: 2076 encodes a transcription factor is further evidenced by the homology search and sequence alignment provided in Exhibit A which accompanies the Declaration of Dr. Marion Wood submitted herewith.

Furthermore, the Declaration of Dr. Marion Wood submitted herewith, clearly demonstrates that one of skill in the art can employ the polynucleotide sequence of SEQ ID NO: 2076 to design and create DNA constructs which may be used to produce transgenic plants having modified phenotypes.

It is thus submitted that the claimed polynucleotide of SEQ ID NO: 2076 does indeed have a specific and substantial utility, namely that of encoding a transcription factor, and that the rejection

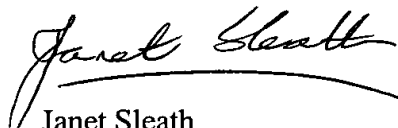
of the claims under 35 USC §101 may be properly withdrawn. Applicants further submit that one of skill in the art to which the present invention pertains, on being provided with the instant specification, would be able to make and use the claimed polynucleotides and DNA constructs to modify gene expression in plants, and that the rejection of the pending claims under 35 USC §112, first paragraph, may thus be properly withdrawn.

#### **Concluding Remarks**

Early reconsideration and allowance of the pending claims is respectfully requested. Every effort has been made to put the claims in condition for allowance. Should the Examiner have any further concerns regarding this application, she is respectfully requested to telephone the undersigned at: 206.382.1191.

The Commissioner is hereby authorized to charge any additional fees which may be required in connection with the filing of these documents, or credit any overpayment, to Deposit Account No. 19-3555.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Janet Sleath", with a horizontal line underneath.

Janet Sleath  
Registration No. 37,007

**Date: October 13, 2003**  
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